

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SUSAN HARTMAN)	
Claimant)	
)	
VS.)	
)	
SCHOWALTER VILLA)	
Respondent)	
)	
AND)	
)	
KANSAS ASSOC. OF HOMES FOR AGING INSURANCE GROUP)	
Insurance Carrier)	Docket No. 1,041,460
)	
AND)	
)	
WATERS EDGE RESTAURANT)	
Respondent)	
)	
AND)	
)	
KANSAS RESTAURANT & HOSPITALITY ASSOC. SELF-INSURANCE FUND)	
Insurance Carrier)	

ORDER

Claimant requests review of the October 6, 2009 Preliminary Hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

Claimant initially alleged injury to her right knee as a result of a slip and fall incident on August 15, 2007, while she was a part-time employee of Waters Edge Restaurant. After that incident she continued her full-time employment at Hesston College. She then quit that job and became a full-time employee at Waters Edge Restaurant. And later she left that employment and went to work for Schowalter Villa. Consequently, she amended

her application for hearing alleging bilateral knee injuries on August 15, 2007 and each and every day thereafter.¹

When claimant slipped and fell in the parking lot behind Waters Edge Restaurant she was on an errand to pick up her paycheck at Waters Edge Restaurant. She was not scheduled to work that day but it was customary for her to go pick up her paycheck on Wednesday although payday was Thursday.

The Administrative Law Judge (ALJ) found that there was insufficient evidence that claimant's injuries arose out of and in the course of her employment with either Waters Edge Restaurant or Schowalter Villa. And the ALJ further found that timely notice was not provided to Schowalter Villa.

Claimant requests review and argues that she met her burden of proof to establish that the slip and fall accident arose out of and in the course of her employment with Waters Edge Restaurant. Claimant's brief did not challenge the ALJ's findings with regard to Schowalter Villa.

Respondent, Waters Edge Restaurant, argues the ALJ's Order should be affirmed.

Respondent, Schowalter Villa, argues that claimant did not sustain an accidental injury arising out of and in the course of their employment nor did she provide timely notice. Consequently, Schowalter Villa argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Susan Hartman was a part-time employee for Waters Edge Restaurant and would typically work Thursday or Friday night or Saturday morning for an approximate total of five hours a week. Claimant was also working a full-time job as an assistant cook during the day with Hesston College.

On August 15, 2007, after claimant got off work at Hesston College she went to Waters Edge Restaurant to pick up her paycheck. Tammy Wyse, Waters Edge Restaurant's manager, testified that although payday was Thursday, as a convenience she allowed her employees to pick their paychecks up when they became available at the restaurant which was usually Wednesday afternoon. Claimant testified that it was her normal practice to pick up her paycheck at the restaurant on Wednesday. But she agreed that she was not told that she had to get her paycheck on that day nor was she told where to park when she went to the restaurant to get her paycheck.

¹ Claimant worked at Hesston College but did not include that employer in the amended application for hearing which alleged injury each and every day worked after the August 15, 2007 slip and fall incident.

As previously noted, claimant was not scheduled to work at Waters Edge Restaurant on August 15, 2007, when she dropped by the restaurant to pick up her paycheck. Claimant parked in back of the restaurant, where she normally parked when working. As she walked toward door she slipped on water in the parking lot and fell to the ground. She alleged injury to her right knee.

Initially, it should be noted that in her brief to the Board the claimant did not dispute the ALJ's finding that she failed to provide timely notice nor establish that she suffered injury during her employment with Schowalter Villa. The claimant's testimony was consistent that she injured her right knee in the slip and fall incident in the parking lot when she went to pick up her paycheck from Waters Edge Restaurant. Although her right knee continued to cause her problems as she continued working she attributed her continued problems to the fall. Moreover, Dr. Fluter attributed her right knee problem to the fall on August 15, 2007. And claimant did not allege injury to her left knee. The ALJ analyzed the evidence with regard to Schowalter Villa in the following fashion:

As noted at the time of the preliminary hearing, there is insufficient evidence available to the court to establish that Claimant suffered personal injury by accident arising out of and in the course of her employment with Respondent Schowalter Villa. Nor did she give notice to Schowalter Villa of a claimed injury. Indeed, Claimant attributes her knee complaints to the August 15, 2007 slip and fall while employed by Respondent Water's Edge Restaurant. If the claim is compensable, it is the responsibility of Respondent Water's Edge Restaurant and its insurance carrier.

This Board Member agrees and affirms the finding that claimant failed to provide timely notice of injury and further failed to meet her burden of proof that she suffered accidental injury arising out of and in the course of her employment with Schowalter Villa.

Claimant argues that her alleged injury to her right knee from the slip and fall incident in the parking lot is compensable. She further argues that an injury occurring on an employer's premises when an employee is there to pick up a paycheck is a compensable injury arising out of and in the course of employment.

In *Mendoza*² the Court of Appeals determined that a trip to pick up a paycheck was a work-related errand or special purpose trip where the employer directed the employee to pick up a paycheck at a location separate and apart from the workplace. In *Palmer*³ the employee was directed what day and time she was to pick up her paycheck which was a time the business was not open to the public. A personal injury suffered on the premises when she picked up her paycheck at the designated time was held compensable.

²*Mendoza v. DCS Sanitation*, 37 Kan. App. 2d 346, 152 P.3d 1270 (2007).

³*Palmer v. Lindberg Heat Treating*, 31 Kan. App. 2d 1, 59 P.3d 352 (2002).

This Board Member finds the foregoing cases distinguishable from the facts in this case. *Mendoza* is factually distinguishable because claimant was not directed by her employer to a separate location apart from her workplace to pick up her paycheck. Moreover, her employer never told her when to pick up her check. *Palmer* is factually distinguishable as the Waters Edge Restaurant was open to the public when claimant chose to get her paycheck and claimant chose the time. Moreover, she was not on the premises of Waters Edge Restaurant when she suffered her alleged personal injury in the slip and fall incident.

Generally, an injury suffered when an employee travels to and from work does not arise out of and in the course of employment.⁴ As noted by the ALJ, there was insufficient evidence that Waters Edge Restaurant owned or had control over the parking lot or the portion of the parking lot where claimant slipped and fell. Consequently, the “going and coming rule” applies and claimant has failed to meet her burden of proof that she suffered accidental injury arising out of and in the course of her employment.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁵ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁶

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Bruce E. Moore dated October 5, 2009, is affirmed.

IT IS SO ORDERED.

Dated this 26th day of February 2010.

DAVID A. SHUFELT
BOARD MEMBER

c: R. Todd King, Attorney for Claimant
Michael L. Entz, Attorney for Schowalter Villa and its insurance carrier
Vincent Burnett, Attorney for Waters Edge and its insurance carrier
Bruce E. Moore, Administrative Law Judge

⁴ See K.S.A. 44-508(f).

⁵ K.S.A. 44-534a.

⁶ K.S.A. 2009 Supp. 44-555c(k).